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OFFICE OF PETITIONS

In re Application of :
Hancock et al :
Application No. 10/035,290 : DECISION GRANTING PETITION
Filed: January 3, 2002 : UNDER 37 CFR 1.137(b)
Attorney Docket No. M&G 838.256USD1 :

This is a decision on the petition under 37 CFR 1.137(b), filed July 30, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before June 8, 2004, as required by the Notice of Allowance and Fee(s) Due, mailed March 8, 2004. A Notice of Abandonment was mailed on July 27, 2004.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Since the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3).

35 U.S.C. § 41(a)(7) and 151 each requires payment of the issue fee as a condition of reviving an application abandoned for failure to pay the issue fee. Therefore, the filing of a continuing application (or a Request for Continued Examination (RCE, as in this case) without payment of the issue fee is not an acceptable reply in an application abandoned for failure to timely pay the issue fee. See MPEP § 711.03(c)(II)(A)(1). Accordingly, as authorized, the \$1,330 issue fee due at the time of filing the instant petition will be charged to petitioner's Deposit Account No. 13-2725. Additionally, since the publication fee was also required by the Notice of March 8, 2004, the \$300 publication fee will likewise be charged to the aforementioned deposit account.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of

the publication and issue fees; (2) the petition fee; and (3) an acceptable statement of unintentional delay have been received. Accordingly, the reply to the Notice of March 8, 2004 is accepted as having been unintentionally delayed.

While no petition to withdraw from issue has been received, in view of the filing of the RCE, the RCE will act to effectively withdraw this application from issue. Accordingly, this application is withdrawn from issue for consideration of an Information Disclosure Statement and replacement drawings in the concurrently filed RCE.

Petitioner is advised that the issue fee paid in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.¹

Petitioner has filed a notification of change in small entity status pursuant to the provisions of 37 CFR 1.27(g)(2). Therefore, in accordance with the request, status as a small entity has been removed. All future fees paid must be paid at the large entity rate.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

The application file is being forwarded to Technology Center AU 3632 for processing the concurrently filed RCE and for appropriate consideration of the concurrently filed replacement drawings and Information Disclosure Statement, as well as the Information Disclosure Statements filed on October 7, 2004 and December 29, 2004.



Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).